

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

LARRY KIRKWOOD,

Plaintiff,

v.

K. RAMIREZ,

Defendant.

Case No.: 1:23-cv-00314-JLT-SKO (PC)

**ORDER GRANTING EX PARTE  
APPLICATION TO MODIFY DISCOVERY  
AND SCHEDULING ORDER**

(Doc. 36)

Plaintiff Larry Kirkwood is appearing pro se and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds on Plaintiff's Eighth Amendment failure to protect claim against Defendant.

**I. INTRODUCTION**

The Court issued its Discovery and Scheduling Order on June 12, 2024. (Doc. 31.) On July 24, 2024, Plaintiff filed a Notice of Change of Address, stating he was no longer incarcerated and was residing in Van Nuys, California. (Doc. 35.)

On August 28, 2024, Defendant filed an Ex Parte Application to Modify Scheduling Order. (Doc. 36.)

**II. DISCUSSION**

Defendant seeks a 90-day extension of the exhaustion motion deadline, presently set for September 12, 2024. (Doc. 36.) Defense counsel states the deposition notice sent to Plaintiff at his

1 address of record was returned to her office undelivered. (Doc. 36-1 at 2, ¶ 3.) Counsel obtained a  
2 telephone number for Plaintiff from the Division of Adult Parole Operations and spoke with him  
3 by phone on or about August 8, 2024. (*Id.*, ¶¶ 3-4.) After Plaintiff provided defense counsel with  
4 an updated address,<sup>1</sup> Plaintiff stated his preference for being deposed closer to his current address.  
5 (*Id.*, ¶ 4.) The parties also discussed Defendant re-serving written discovery previously  
6 propounded to Plaintiff. (*Id.*)

7 Defense counsel states Plaintiff had no objection to an extension of the exhaustion motion  
8 deadline. (*Id.*, ¶ 2.) Defendant asserts Plaintiff's deposition testimony may relate to the topic of  
9 exhaustion and an extension of the exhaustion motion filing deadline will permit counsel to take  
10 Plaintiff's deposition, obtain a transcript, and determine whether an exhaustion motion should be  
11 filed in this action. (Doc. 36 at 2.)

### 12 **III. CONCLUSION AND ORDER**

13 Good cause appearing, **IT IS HEREBY ORDERED** that:

- 14 1. Defendant's ex parte application to modify the exhaustion motion deadline (Doc. 36)  
15 is **GRANTED**; and
- 16 2. The deadline for the filing of an exhaustion motion is extended from September 12,  
17 2024, to **December 11, 2024**.

18  
19 IT IS SO ORDERED.

20 Dated: **August 29, 2024**

*/s/ Sheila K. Oberto*  
21 UNITED STATES MAGISTRATE JUDGE

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28 <sup>1</sup> Counsel advised Plaintiff to update his address with this Court.